

**MEMORANDUM OF UNDERSTANDING
AMONG FEDERAL AGENCIES
ESTABLISHING THE
COLUMBIA RIVER BASIN FEDERAL CAUCUS**

I. PARTIES

This Memorandum of Understanding (MOU) is entered into among the following Federal agencies, acting through the specified regional, state, or other local office of each agency and collectively referred to as the Columbia River Basin Federal Caucus or Federal Caucus (the Caucus):

Northwest Region, National Marine Fisheries Service, Department of Commerce
Bonneville Power Administration, Department of Energy
Northwestern Division, U.S. Army Corps of Engineers, Department of the Army
Regions 1, 4, and 6, U.S. Forest Service, Department of Agriculture
Pacific Northwest Region, Bureau of Reclamation, Department of the Interior
Region 1, U.S. Fish and Wildlife Service, Department of the Interior
Idaho State Office and Oregon/Washington State Office, Bureau of Land Management,
Department of the Interior
Region 10, Environmental Protection Agency
Northwest Area Office, U.S. Geological Survey

II. BACKGROUND

In the Columbia River Basin to date, the National Marine Fisheries Service has listed 13 species of anadromous fish and the U.S. Fish and Wildlife Service has listed two species of resident fish as threatened or endangered under the auspices of the Federal Endangered Species Act (ESA). Pursuant to Section 7 of the ESA, Federal agencies, including the agencies of the Federal Caucus, are directed, among other things, to utilize their authorities in furtherance of the purposes of the ESA by carrying out programs for the conservation of Columbia Basin listed species and to insure that any action authorized, funded, or carried out by each agency is not likely to jeopardize the continued existence of any listed species or adversely modify critical habitat.

The National Marine Fisheries Service has completed or will soon complete recovery plans for listed salmon and steelhead in the Columbia Basin, pursuant to section 4(f) of the ESA. Similarly, the Fish and Wildlife Service will develop recovery plans for fish species under its ESA jurisdiction. The recovery plans will guide the efforts of federal agencies, states, tribes, and non-governmental stakeholders to take steps to recover listed fish species in the Columbia River Basin. In this regard, the plans, coupled with associated ESA section 7 consultations and section 10 incidental take statements, identify the hydropower, habitat, hatchery and harvest actions and activities necessary to address federal agency responsibilities for fish recovery.

III. PURPOSE AND SCOPE

This MOU establishes and describes a collaborative effort among federal agencies to better integrate, organize, and coordinate the federal fish recovery and water quality efforts they implement or fund which relate directly to improving the Columbia River Basin aquatic ecosystem. The geographical span of this MOU is the Columbia River Basin and its tributaries as identified in anadromous and resident fish recovery plans. Once signed, this document will serve as the framework for Caucus organization and activities and replace the original Federal Caucus MOU executed in December, 2000¹.

The Caucus is established to meet five purposes:

- Coordinate federal recovery of anadromous and resident fish, particularly those listed as threatened or endangered under the ESA,
- To achieve the objective of a healthier Columbia River Basin aquatic ecosystem as consistent with each agency's missions and responsibilities,
- To the extent practicable, coordinate execution of federal trust and treaty responsibilities to Native American tribes in the Columbia Basin as they relate to the purposes of this MOU,
- Seek, to the extent practicable and permissible within the authorities of each agency involved, to present unified and consistent points of view in discussions, negotiations and partnerships with state, tribal, and local agencies and the collaborative forums in which federal, state, tribal, and/or local agencies participate.² In cases where consensus is unable to be reached, the members agree to abide by the terms of the February 14, 2007 Federal Interagency Coordination paper (attached). These terms are intended to apply to issues arising between federal agencies concerning fish recovery work and do not affect any agency's authorities, and
- Provide inter-agency staff capacity for emergencies and other situations as may require a multi-agency federal response that is not provided through other forums.

To achieve the purposes identified above, the agencies of the Federal Caucus agree to the following general functions, within available resources, as defining the scope of Caucus activities:

- Coordinate agency activities under the Endangered Species Act, the Clean Water Act (with specific emphasis on toxics and temperature in the Columbia Basin), National Environmental

¹ Memorandum of Understanding Among Federal Agencies Concerning the Conservation of Threatened and Endangered Fish Species in the Columbia River Basin.

² These "collaborative forums" include the FCRPS Regional Implementation Oversight Group, Columbia Basin Fish and Wildlife Authority, the U.S. v. Oregon process, the Regional Forum, the Northwest Power and Conservation Council, the Regional RME Deputies Forum, and others as may exist or evolve over the life of this MOU.

Policy Act, the 1980 Northwest Power Act, agency enabling legislation, and other applicable laws and regulations, as they relate to the conservation of Columbia Basin fish,

- Track and report progress in planning and implementing agency recovery actions in hydropower, habitat, harvest, and hatcheries (the “Hs”) consistent with each agency’s available databases,
- Share and coordinate information and decisions that have the potential to impact the activities or interests of other agencies, especially in the area of endangered species consultations and recovery,
- Develop and coordinate joint-agency messaging and outreach strategies where appropriate,
- Coordinate agency legal positions and strategies when appropriate,
- Coordinate cost analyses and funding issues related to recovery implementation,
- Integrate programs to research, monitor, and evaluate progress toward established goals avoiding duplication of effort, and
- Coordinate on the use of best available scientific information in adaptive management.

In order to meet the purposes and scope identified above, and in recognition of agency resource constraints, the Caucus agencies agree to focus their yearly efforts through adoption of three to five annual “action items” and to develop mutually agreed-to-work plans to accomplish action item objectives.

IV. ORGANIZATIONAL STRUCTURE

A. Regional Executives

The Federal Caucus will undertake the coordination effort defined in this MOU under the direction of the appropriate state and regional directors and administrators of each Federal Caucus member agency, collectively known as the Regional Executives. Agencies with multiple executive entities within the Caucus’ geographical span may designate a lead agency executive to speak for the agency on issues of Caucus business. The Regional Executives will set the general direction and priorities for the work of the Federal Caucus. The Regional Executives will communicate and coordinate as needed and will convene to deliberate matters needing executive attention.

Executive meetings will be scheduled quarterly to review Caucus work products, resolve disputes, and anticipate long-range strategic issues as may affect multiple agencies. Supplemental meetings and/or conference calls may be scheduled as required.

B. Federal Caucus Members

Each signatory Regional Executive or lead agency executive will identify a senior staff person (Caucus member) to represent and speak for their respective agency at Caucus activities. Each agency may also designate an alternate representative to act in the event of a Caucus member's absence. The term of service for each agency's Caucus member and alternate shall be as determined by the appointing executive. Caucus members shall be responsible for overseeing the day-to-day activities needed to effectuate the purposes of this MOU consistent with available agency resources. The Caucus will report to the Regional Executives on a periodic or as-needed basis and will elevate to the Regional Executives any matter that the members cannot resolve.

Each agency's Caucus member will be responsible for communicating to his or her Regional Executive agreements made and actions undertaken by the Caucus, and to coordinate Caucus information within their agencies as appropriate. Caucus members will also be responsible for carrying through on the actions that pertain to and are agreed to by their agency.

Each agency will commit as much time of its Caucus member as is reasonably required for the business of the Caucus, and each agency will bear all costs of its member's participation.

Caucus meetings shall be scheduled at least monthly. Supplemental meetings and/or conference calls may be scheduled as required. The Caucus members may develop other such administrative procedures, protocols, and/or understandings as may be required for the Caucus to operate effectively.

C. Caucus Leadership

The position of Caucus Chair shall be filled from among the Caucus agencies upon consensus approval³ by the Regional Executives. The term, and reappointment of subsequent terms, is made by recommendation of the Caucus members and consensus approval of the Regional Executives. The term of service for the Chair shall be one year.

The responsibilities of the Caucus Chair include strategic leadership of Caucus activities and the administrative functioning of the Caucus, consistent with the scope and purposes of this MOA.

The Chair's strategic leadership duties include:

- Leading the selection of Caucus action items, overseeing development of an annual work plan to achieve the objectives of the selected focus areas, and facilitating the completion of the work identified in those plans, and
- Responding to broad issues associated with recovery planning that may present barriers to federal agencies' plan implementation and leading the development of strategies to address those issues.

³ "Consensus approval" means expressions of either "approve" or "no objection."

The Chair's administrative duties include:

- Overseeing the establishment of teams as may be needed to carry out Caucus business,
- Supervising the Caucus Program Coordinator and Caucus administrative staff,
- Coordinating Caucus activities with the staff of the President's Council of Environmental Quality (CEQ), as appropriate, and
- Other actions as may be necessary to meet the purposes of this document.

A Vice Chair shall also be filled from among the Caucus agencies upon consensus approval by the Regional Executives. The term of service for the Vice Chair shall be one year, concurrent with the term of service of the Chair. The Vice Chair carries out the responsibilities of the Chair in the event of the Chair's absence and will normally be selected to succeed the Chair upon completion of the Chair's term of service. In the event the Chair is appointed to a subsequent term, the Vice Chair may also be reappointed upon recommendation by the Caucus members and consensus approval by the Regional Executives.

A Caucus Program Coordinator and/or additional administrative staff may be appointed, as agreed to by the Regional Executives, to assist the Chair and carry out other duties as may be assigned. Such positions may be resourced through detail from member agencies or through contract, with duties as recommended by the Chair and consensus approved by the Caucus members, consistent with authorities and regulations. The location of the Program Coordinator and administrative staff shall be as recommended by the incoming Caucus Chair and determined through consensus approval of the Caucus members.

The duties of the Program Coordinator include:

- Ensuring that this MOU is kept current,
- Supporting the chair in development of the annual work plan and tracking work plan progress,
- Management of Caucus and Executive meetings and conference calls, to include coordination of times and agendas, facilitating pre-meeting coordination between staff, summarizing meeting results, overseeing production of Caucus products, and coordinating the efforts of Caucus teams and committees, and
- Other duties as may be assigned by the Chair and consensus approved by the Caucus.

D. Teams

Caucus activities will normally be carried out by teams comprised of technical and/or policy representatives of signatory agencies. These teams may be either standing or ad hoc.

Standing teams are established for functions anticipated to extend for an indefinite period of time.

Standing Caucus teams:

- Federal Caucus Communications Team (FCCT). The FCCT provides interagency communications, coordination and timely and factual information on federal efforts to protect and restore fish populations and their habitat, and related issues.
- Tribal Liaison Team (TLT). TLT supports the federal trust responsibility that each agency has with each of the tribes within their service area, develops collaborative approaches to work with tribes, on a continuing basis, to identify and resolve issues and provides an organizational framework for preparing for tribal leader/federal executive meetings.
- Legal Team. The legal team works with the Caucus, the Regional Executives, and the Department of Justice to coordinate policy and legal strategies and positions involving multiple Caucus agencies.

Ad hoc teams may be established for a specific period of time to address annual action items, a discrete problem, or other issues as may be identified by the Caucus. The Caucus may establish other standing and ad hoc teams as it deems appropriate.

Each standing and ad hoc team (with the exception of the legal team) shall operate under written guidelines that describe the team's scope of duties, desired product(s), and operating procedures. Team guidelines are subject to consensus agreement by the Caucus members.

Team chairs shall be identified from among Caucus agency staff and seated by consensus approval of the Caucus. Chairs shall be appointed for a two-year term during which time their service may be terminated as determined by the Caucus. Chairs may serve subsequent terms upon consensus approval of the Caucus. The role of the team Chair is to set agendas; ensure coordination among team members; represent the team at meetings of the Caucus and, when appropriate, the Regional Executives; and to ensure the team's objectives are met in accordance with the team guidelines.

V. RESOURCES

The Regional Executives commit to provide staff capacity and other resources in support of Caucus activities consistent with available funding and applicable statutes, regulations, and authorities.

VI. MISCELLANEOUS PROVISIONS

The participation by each agency in the actions and activities for which this MOU calls is contingent upon the availability of future appropriations or funding. Execution of this MOU does not obligate any specific amount of agency expenditure in furtherance of this MOU, such expenditures being at the discretion of each agency consistent with applicable statutes, regulations, and authorities.

Neither this MOU nor its attachment delegates any authority or responsibility established by law. Nor do they limit the discretion, alter or affect the statutory and other legal rights of parties, including any rights to legal remedies, or the authorities, responsibilities or obligations of the parties under relevant laws. Also, they do not create any right to any type of administrative review nor create any new right to judicial review or any other right or benefit or trust responsibility, substantive or procedural, enforceable by a party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

Further, if the processes and procedures of the Federal Caucus would delay the implementation of any actions that an agency determines is necessary to perform its mission, that agency reserves the right to proceed with fulfilling those obligations in such manner as it deems appropriate or necessary.

Nothing in this Memorandum is intended to affect or impair tribal treaty rights or the trust responsibilities of the signatory federal agencies.

This MOU will become effective as of the last date upon which it is executed among the agencies which are signatory hereto. This MOU shall be reviewed by the Caucus every three years and will remain in effect until modified or terminated by the agencies that have executed it. Any agency may unilaterally terminate its participation in this MOU upon 30 days written notice to the other signatory agencies.

This MOU may be amended only with the agreement of all of the Federal Caucus agencies that have executed it and remain parties thereto at the time of amendment. Additional federal agencies may become party to this Memorandum subsequent to the date of the original agreement upon signature to the agreement.

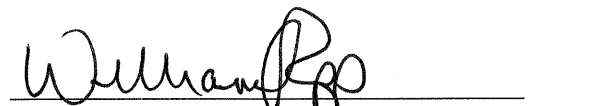
VII. SIGNATURES



Administrator,
Bonneville Power Administration

10/24/08


Date Signed



Brigadier General, U.S. Army Corps of Engineers,
Division Commander

15 Oct 2008


Date Signed



Regional Administrator, Northwest Region
NOAA Fisheries Service

10/24/08

Date Signed



Acting Regional Director, Region 1,
U.S. Fish and Wildlife Service

10/24/08

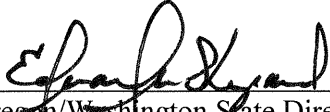
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Regional Director, Pacific Northwest Region
Bureau of Reclamation

10-24-08

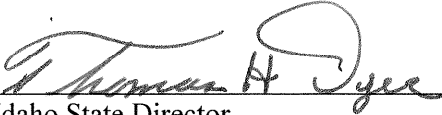
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Oregon/Washington State Director,
Bureau of Land Management (Lead)

10/24/08

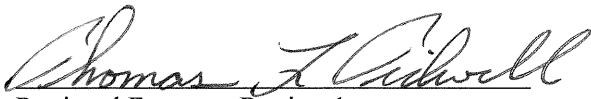
Date Signed



Idaho State Director,
Bureau of Land Management

11/25/08

Date Signed



Regional Forester, Region 1,
U.S. Forest Service

11/15/08

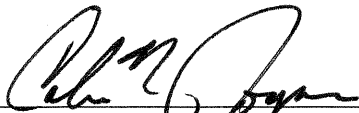
Date Signed



Regional Forester, Region 1,
U.S. Forest Service

11/10/08

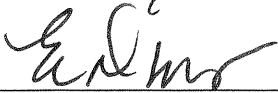
Date Signed



Regional Forester, Region 6,
U.S. Forest Service (Lead)

10/24/08

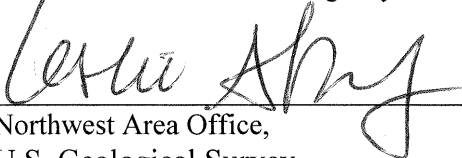
Date Signed



Regional Administrator, Region 10,
Environmental Protection Agency

10/24/08

Date Signed



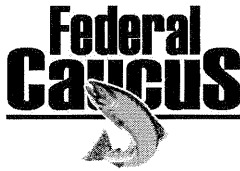
Northwest Area Office,
U.S. Geological Survey

10/24/08

Date Signed

VIII: ATTACHMENT

The provisions of the Federal Caucus Protocol for Federal Interagency Coordination, dated February 14, 2007, as attached, are incorporated into this MOU.



ATTACHMENT

Federal Caucus Operating Protocol

SUBJECT: Protocol for Federal Interagency Coordination

DATE: February 14, 2007

The primary purpose of the Federal Caucus is to improve communications and coordination among the federal agencies regarding recovery of salmonid species within the Columbia River Basin, the Federal Columbia River Power System (FCRPS), related fish issues and other issues as may involve multiple Caucus agencies.⁴ Since its inception, the Caucus has attempted to operate on the principles of “no surprises” and the use of internal federal dialogue to resolve differences at the technical staff, policy and executive levels as appropriate.

To that end, the following protocol is adopted by Federal Caucus agencies in order to clarify and foster interagency communication and coordination for actions, activities, or decisions falling within areas of policy overlap that have the potential to impact the activities or interests of other agencies. The intent is to provide the maximum opportunity to work out interagency concerns and issues before final decisions are made.

Protocol:

- The agency originating an action, decision, or activity⁵ agrees to:
 - Think through the implications of anticipated actions and how they may effect the jurisdictional responsibilities, interests, and activities of other federal agencies,
 - Notify agencies so affected of the anticipated action(s)/decision(s),

⁴ While FCRPS operations and related fish issues are generally the common thread, the protocol and procedures in this document are expected to be applied in a broad sense to any issues between the agencies and which may or may not warrant full federal caucus involvement.

⁵ “Action, decision, or activity” includes sharing handout, PowerPoint, and other relevant prework materials in advance of Federal Caucus, Federal executive, and Salmon Policy Team meetings to Caucus members as appropriate to the issue being addressed. It is also intended to include information developed for non-federal audiences which may affect or relate to the missions or programs of other federal agencies. Court agreements which have direct or indirect effects on Federal Caucus agencies should be vetted through the Caucus prior to DOJ approval.

SUBJECT: Protocol for Federal Interagency Coordination

DATE: February 14, 2007

- Be respectful of the other workload commitments of agencies from whom comments are being requested, providing as much time as possible for consideration by affected agencies,
 - Identify the date at which anticipated actions or decisions will take effect, clearly articulating the suspense date and/or time by which feedback is needed, and
 - Take input into account prior to rendering a final decision and provide feedback to commenting agencies as to the degree to which their concerns were addressed.
- Affected agencies agree to:
 - Make a good-faith effort to review provided material and respond within the time period requested to the originating agency,
 - Coordinate comments among other affected agencies, as appropriate,
 - Seek redress of differences unresolvable at the technical staff level through the Federal Caucus⁶ and, if necessary, the regional federal executives in accordance with the “Dispute Resolution” process defined below, and
 - Preclude sharing comments with parties outside the federal agencies at least until the originating agency has attempted to reconcile identified differences.

Dispute Resolution:

- Agencies agree to seek resolution of disputes (as appropriate) between agencies at the lowest level practical.
- Agencies agree to the following process for those technical issues deemed by the lead federal agency to be unresolvable at the technical staff level:
 - Issues unresolvable at the technical staff level are to be raised through internal supervisory channels to the agency’s Federal Caucus representative.
 - Issues unresolvable at the Caucus level will be forwarded by the Caucus to the Regional Federal Executives. The Caucus Chair, working with the relevant agencies, will ensure the issues in dispute are clearly described and identify the options available for executive consideration.

⁶ It is recognized that some actions or decisions may involve or affect only 2 or 3 agencies, in which case it is understood that issue resolution may take place directly between those agencies without action by the Federal Caucus as a whole.

SUBJECT: Protocol for Federal Interagency Coordination

DATE: February 14, 2007

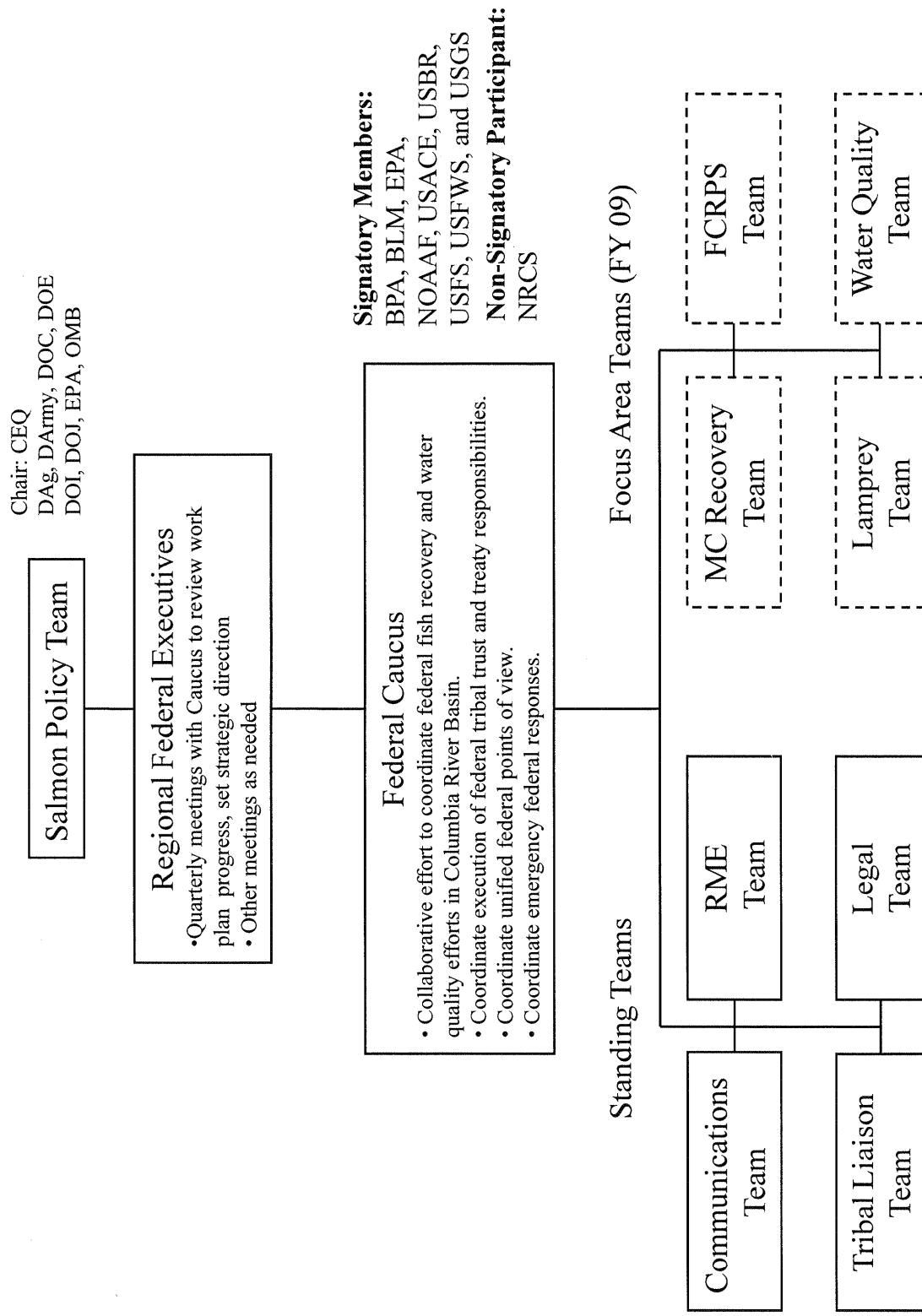
- Issues unresolvable at the Regional Federal Executive level will be forwarded through the Chair of the Council of Environmental Quality (CEQ) for review and discussion by the federal Salmon Policy Team.
- Decisions rendered by the Chair, CEQ shall be considered final.

Miscellaneous:

- This protocol is intended to foster effective collaboration for those decisions and actions involving multiple federal agencies.
- Adoption of this protocol does not obligate any specific amount of agency expenditure in furtherance of this protocol, such expenditures being at the discretion of each agency.
- This protocol does not delegate any authority or responsibility established by law. Nor does it limit the discretion, alter or affect the statutory and other legal rights of member agencies, including any rights to legal remedies, or agency authorities, responsibilities, or obligations under relevant laws.
- If this protocol would delay the implementation of any action for which an agency is obligated under law, that agency reserves the right to proceed with fulfilling those obligations in such manner as it deems appropriate or necessary. Any agency so acting will keep all Caucus parties informed of its decision and subsequent actions.
- Agencies are encouraged to incorporate “effective collaboration” as a component in staff and manager performance elements.

Draft Federal Caucus Organization Chart

(Per 2008 MOU)



As of 15 October 2008